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PAGES 9 TO 16.

THE JOURNAL.

SATURDAY, MAY 9, 1896.—SIXTEEN PAGES.

A Buyer Wanted

For something you have to sell? Insert an "ad." in THE JOURNAL's classified advertising columns and dispose of it at once.

PAGES 9 TO 16.

GIVES THE MONEY TO MRS. FLEMING.

Supreme Court Decides the \$85,000 Held in Trust Is Legally Hers.

Indictment for the Murder of Her Mother Is No Bar to Possession.

Even Conviction Would Not Invalidate Her Claim to the Property Left to Her.

IN LAW SHE IS STILL INNOCENT.

The Imprisoned Woman Deeply Thankful for the Ruling, and Says She Expects a Quick Trial and Acquittal.

I am very glad that I have been awarded the money. It makes me very happy and it will enable me to defend myself against the charge which has wrongfully been brought against me. My case I expect, will soon come to trial, when I shall hope for and expect an early acquittal.

Alice A. Fleming

Mrs. Mary Almont Alice Livingston Fleming wrote the above statement yesterday when she heard of the decision of the Appellate Division of the Supreme Court, which ordered that she shall receive from the estate of her mother the sum of \$85,000, which has been in litigation and which Judge Pryor decided was not to go to her. Mrs. Fleming is now in the Tombs awaiting trial for the murder of her mother, Mrs. Bliss.

On May 24, 1870, a judgment was obtained against the property of Robert Swift Livingston's estate, and the property was sold by a referee. Of the proceeds derived from this sale, \$23,050.05 is now in the hands of the City Chamberlain, "to be distributed at the death of Evelina M. Bliss." A further amount of \$60,000 is subject to the same conditions.

Upon the death of Mrs. Bliss, Mrs. Fleming made due application for the money, but objections were interposed by relatives of the late Mr. Livingston, on the ground that she was not entitled to benefit by a crime she had committed. The Supreme Court referred the matter to Lawrence Godkin, as referee, and he decided that Mrs. Fleming was not entitled to the money until she had been acquitted of the charge of murder. This decision was approved at Special Term by Judge Pryor, and an appeal was taken.

The decision of the Appellate Court was written by Judge Barrett, and grants Mrs. Fleming's application for the money. His opinion says:

The only ground upon which the application was contested was that an indictment had been found against the petitioner for the murder of her mother. A conviction upon the indictment would not be legal proof of the fact of the murder. The respondents here would not be bound by an acquittal there. The converse must be true. If, then, a conviction would not be binding, what shall be said of an indictment, which is but an accusation? It is not permitted even to discredit a witness by showing on cross-examination that he has been indicted. It seems quite clear, then, upon the record, that no legal obstacle stands between the petitioner and the enjoyment of that to which she has the legal right.

The learned Judge of the court below confers this, but denies the right to immediate payment only because the petitioner's acquittal in this proceeding might prejudice the people upon the trial of the indictment. That, however, is but a remote apprehension. The proceedings here would be inadmissible upon the criminal trial. Where, then, the prejudice? Surely not that which the jury in the criminal action may hear of the civil proceeding and possibly be affected by the result. That is too trifling and too remote to justify the withholding of an undoubted property right. The courts are not to grant or deny civil rights upon a balancing of expediencies.

The petitioner's application should be granted or denied upon the facts properly before the court in this proceeding—upon the pleadings and proofs of the parties. The court should not deny justice to the parties immediately before it upon the notion that the public good may be promoted by its temporary refusal to proceed according to law.

This woman comes and asks for what in law is her own. The answer is, You have been accused of murder. Upon that the Court dismisses her from its presence until she shall have secured an acquittal. In our judgment this was a denial of the justice to which, upon her record, she was entitled.

The order should be reversed and the application granted.

Charles W. Brooke, one of the lawyers for the defence, said, upon hearing Judge Barrett's opinion:

"The decision is an eminently just one. The parties who instituted the proceedings would scarcely in any event have any interest in the estate. The devise was to Mrs. Fleming and her heirs. The Court could not divest the title, and in any event the children would inherit."

Mrs. Fleming was in her cell in the Tombs when the news of the court decision was brought to her. In spite of the bars and grated windows she has managed to make the place of her imprisonment quite cheerful. Though scantily furnished it is bright and pleasant, and shows in

many ways that it receives the care of a refined woman. On one side of the cell are two coats and above them hangs a rosary. On one of the coats yesterday lay the babe born to Mrs. Fleming since her arrest. As she talked of the court decision she played with the child and shook its rubber bottle before its face, while the little one cooed and extended its arms toward its mother.

"The decision of the Court was a most pleasant surprise," said Mrs. Fleming. "I had been led to believe that the decision would not be reached until June. Consequently I did not expect it."

The trial of Mrs. Fleming will begin next Monday morning before Recorder Goff, in Part II. of General Sessions. The District Attorney's office will be represented by J. F. McIntyre, Seaman Miller and Dr. O'Sullivan as medico-legal expert. Mr. McIntyre and Mr. Miller have been working on the case for the past five months. It is said in the office of the District Attorney that the prosecution has a much stronger case against the accused than the public has any idea of. The defence will be represented by C. W. Brooke, John C. Shaw, Graetz Nathan and Howard P. Oltke.

REFORMER'S HEAR WARING

Street Cleaning Commissioner Says That Even Tammany Now Approves Him.

Baltimore, May 8.—Colonel George E. Waring, Street Cleaning Commissioner of New York, addressed the Municipal League Convention to-day on "Separation of Politics from Municipal Business." He stated that he had accepted the Street Cleaning Bureau appointment on the distinct understanding that he was not to be interfered with by politicians. He added that Mayor Strong had not interfered with him from that day to this.

The politicians at first he continued, laughed at the idea that their recommendations would not be considered, but at length accepted the inevitable. The labor organizations and the Grand Army of the Republic also attacked him.

From time to time other troubles arose, but the masses of the people sustained him, and now even the politicians were coming around to his side. One of the "Big Four" of Tammany Hall had even written him a letter saying, "If we win you shall stay in, do not trouble yourself." He could not but be gratified by this, but he said that the best work for municipalities would be done by a total divorce of politics from such affairs.

The Rev. Albert C. Lawson, D. D., president of the Christian Citizenship League of Camden, N. J., followed, in eulogy of Colonel Waring, whose work in New York he praised in the highest terms as an example of what could be done by one brave man, who did not care for the popularity of his work, but with an eye single to the public good.

The south end of the painters' perch was directly over these steps, but neither Magie nor John thought of danger and Charles had never heard that painters' ladders sometimes fall. This ladder was attached to bolts entering the roof beams. The south bolt had been worked so much that the nut which secured it to the beam had fallen off, and only the friction of the iron on the wood prevented the weight of the men and ladder from pulling the bolt out.

As Charles Scott was making his third trip down the steps, bearing his share in the moving, the bolt released itself from the beam, the south end of the painters' ladder fell, and one of the men fell backward, thirty-five feet, until his great body alighted upon the little child toiling down the basement steps.

That painter was William Mitchell, who lives at No. 533 Leonard street, Brooklyn. He was very badly hurt, but the child had saved him from instant death. When he recovered from the first shock Mitchell managed to roll off the body and Patrolman Faulkner picked it up tenderly. Mrs. Parker carried the unconscious little fellow to his mother in whose arms he died a moment later. His right arm and leg had been broken and his skull crushed.

The other painter on the scaffold was Nelson Brigham, who lives at No. 125 Bedford avenue, Brooklyn. He caught at a rope with one hand as the ladder fell, but the free end of the ladder struck a projection of the building and the jar broke his slight hold. He fell upon the sidewalk with such force that his right leg was broken, his head cut and internal injuries inflicted.

Maggie and John were deluged with paint, but were otherwise unharmed. They were cleaned by neighbors. Mitchell was removed to his home and Brigham was taken to St. Catherine's Hospital.

Charles O. Scott, the boy's father, is employed in Richardson's dry goods store in West Twenty-third street, this city. He



MRS. FLEMING IN HER CELL WITH HER BABY AFTER SHE HEARS OF HER GOOD FORTUNE.

Mrs. Mary Fleming, who for nine months has been a prisoner in the Tombs, charged with the murder of her mother, was yesterday declared to be legally entitled to \$85,000 which was to come to her at her mother's death. Efforts had been made to prevent her securing the money, on the ground that she should not be allowed to benefit by a crime. This view was taken by Justice Pryor. Judge Barrett reversed it, saying in the eye of the law she was innocent.

MAN WAS SAVED; BABY WAS KILLED.

Painter Mitchell Fell with a Scaffold and Crushed a Child.

He Was Injured, but His Companion at Work Suffered More Seriously.

LITTLE ONE DIED IN MOTHER'S ARMS.

Had Been Playing House Beneath the Ladder, Which Gave Way While Swinging at the Third Floor.

Charles Scott, who was four years old and lived at No. 533 Leonard street, Brooklyn, was playing "house" yesterday afternoon with Maggie Powers and John Seaton, who are five years old and live at No. 67 Jewell street. Two painters were on a swinging ladder painting the front of No. 67, and the children had watched the ladder swinging at the third floor and the men's brushes until satiated with the novelty.

The "house" was in the yard of No. 67 during the first hour of the play, but Maggie Powers objected to the draughts, or the plumbing, or the smell of paint, and wanted to move. The boys agreed and helped her to carry the "furniture" down some steps to the space in front of the basement door.

The south end of the painters' perch was directly over these steps, but neither Magie nor John thought of danger and Charles had never heard that painters' ladders sometimes fall. This ladder was attached to bolts entering the roof beams. The south bolt had been worked so much that the nut which secured it to the beam had fallen off, and only the friction of the iron on the wood prevented the weight of the men and ladder from pulling the bolt out.

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has two other children—a boy, six years old, and a girl, three years old.

This accident is the fourth of its kind that has occurred in Greater New York within two weeks. Two men were thrown from a scaffold in East New York in the same way on Thursday. In a like accident at the New York end of the Bridge a few days ago one man was killed and two painters whose scaffold fell in Jersey City two weeks ago were so badly hurt that they spent several days in a hospital.

TWO GRAVES FOR HOLMES.

An Ordinary One Would Not Have Held the Huge, Cement-Laden Coffin.

Philadelphia, May 8.—The body of H. H. Holmes, which was imbedded in cement in a pine box yesterday, after the hanging, and then placed in a vault in Holy Cross Cemetery, was this afternoon buried in a double grave, ten feet in depth. Rev. Father McPake conducted the services, and Lawyer Samuel P. Rotan was present. A morbidly curious crowd witnessed the last rites.

The box, with the body imbedded in cement, weighs over a ton, and it was too wide to be lowered into an ordinary grave. Undertaker O'Rourke, therefore, selected space sufficient for two ordinary graves to receive the unusually large coffin. The only vehicle strong enough to hold the box was a wagon used in hauling monuments, and this conveyed the body of Holmes from the vault to its last resting place.

When the funeral services were over the gravediggers, aided by a mason, and under the supervision of Lawyer Rotan, piled a layer of cement two feet thick upon the box. The material was packed in and about the sides and ends of this novel sarcophagus, and when the job was finished the remains of Holmes were pronounced safe from grave robbers for all time.

Lawyer Thomas A. Fahy, the legal adviser of Mrs. Pitzel, stated to-day that he would shortly confer with Lawyer Rotan and the Attorney General, with the view of locating any one of the insurance money, out of which she was swindled by the bogus promissory note which Holmes represented as having been signed by her husband. Mr. Fahy means to attach anything he can find.

A LEAP YEAR WOOING.

Vogel Claims That Because He Refused to Marry, Widow Sass Broke His Window.

Sophie Sass, an elderly widow, living at No. 141 Walton street, Williamsburg, was committed to jail for ten days yesterday, by Justice Lemon, in the Even Street Police Court, on a charge of maliciously destroying a plate glass window in the plumber shop of William Vogel, at No. 251 Johnson avenue.

A month ago Vogel advertised for a housekeeper, and Mrs. Sass applied for the place, although she was then conducting a boarding house. The day following their first meeting Mrs. Sass moved the greater part of her furniture to the rooms in which Vogel lived, back of the plumbing establishment, much to his surprise, and he claimed that she had come to no business understanding up to that time. After the furniture had been placed in the rooms the widow appeared and, according to Vogel, said she was ready to marry.

Vogel told her that could never be, as he already had a wife from whom he was separated. She became so persistent in her love-making, it is alleged, that Vogel ordered her to leave the house.

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BURGLAR SHOT IN A DUEL BEFORE DAWN.

Patrolman Reed Stood in the Fugitive's Path and Returned His Fire.

Policeman's Coat Was Cut by a Bullet, but His Antagonist Was Wounded and May Die.

PATROLMAN RYAN'S NARROW ESCAPE.

One Ball Passed Through His Hat and One Burglar Got Away, Though Mounted Policemen Joined in the Chase.

Patrolman Patrick T. Reed, attached to the Morrisania station house, demonstrated his ability as a marksman before dawn yesterday morning in a duel with a desperate burglar. As a result, the burglar is now lying at the point of death in the Fordham Hospital.

Within the past month Policeman Captain Creeden has received numerous complaints from citizens in his precinct that their houses have been entered by burglars, most of the attempts being made from the rear. So he detailed several patrolmen in citizen's clothes to watch for the thieves.

Shortly after 1 a. m. yesterday, Patrolman Daniel Ryan and Patrick T. Reed, of the mounted squad, of the special detail, parted at Union avenue and One Hundred and Sixty-second street, having agreed upon signals in case of trouble.

Ryan was seen by Reed to turn down One Hundred and Sixty-fifth street, and then heard three pistol shots in rapid succession. Reed was running toward One Hundred and Sixty-fifth street, when he saw a man running toward him, and closely followed by Ryan, who shouted:

"Stop him, Pat, I'm shot!"

The pursued burglar held a revolver in his hand, and, as Reed called to him to stop, the burglar fired. The bullet cut Reed's coat, but the policeman, who was then about twenty yards from the fugitive, returned the fire. The burglar fell. The policeman's bullet had entered the neck under the left ear.

The neighborhood was aroused by the pistol shots, and several mounted policemen were giving chase to the other burglar, who had darted off in the direction of Westchester. Despite their efforts, he made good his escape.

Patrolman Ryan was not, as he had thought, shot, but he had a very narrow escape. He told this story of his encounter:

"I had walked but a short distance on One Hundred and Sixty-fifth street when I saw two men in front of the residence of John E. Barton, a retired sea captain, of No. 1020 Union avenue. They were trying to enter the house by one of the basement windows. They saw me before I could reach them, and both of them fired instantly. I ducked, but one of the bullets struck my hat, passing entirely through it."

Ryan is a son of Sergeant Ryan, of the Twelfth Precinct, and is congratulating himself on his narrow escape. Reed is greatly depressed at the probable result of his shooting.

The man now dying in the hospital said his name is William O'Connor, and said he lived in Collinsville, Conn. When searched by the police there were found in his pockets a chisel with a wooden handle, a piece

of wire attached to some twine, a table-knife, 70 cents in cash and a fine gold watch and chain. He is a handsome fellow, about twenty-four years old, and his entire is that of a man in good circumstances. From his conversation it is evi-

dent that he has received a liberal education.

Dr. Riley, of Fordham Hospital, has very little hopes of O'Connor's recovery. The bullet will not be extracted until to-day. It is lodged in the throat, below the right jaw.

BIG DAMAGES FOR INJURIES.

Second Avenue Railroad Must Pay Rudolph Pohl \$1,500.

The Second Avenue Railroad Company was severely mulcted in the Supreme Court yesterday in the case of Rudolph Pohl against the company.

Pohl was boarding an open car on September 2, 1893. Before he was in his seat the car started, causing him to fall, as a result of which he sustained injuries. He brought suit, through his counsel, Alfred and Charles Steckler.

In the trial before Justice Dugro and a jury in the Supreme Court, the Messrs. Steckler established these facts. The company contended that Pohl met with the accident through his own fault, but the jury, after a few moments' deliberation, brought in a verdict in favor of Pohl for \$1,000.

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BETSY HAD DIED BUT FOR MCCANN.

She Is from Florida; So Is He, and Therefore He Knew What Ailed Her.

Well-Intentioned Persons at the Zoo Were Trying to Make Her Eat New York Grass.

SHE WAS DYING OF INDIGESTION.

"Good Gracious!" Said McCann. "Sea Cows Don't Eat Hay! Get Her Some Sea Weed!"—This Was Done, and Betsy Will Probably Live.

Betsy as Central Park's sea cow has informally been named, will probably live. It was feared that the animal would die, as it refused to taste food on the voyage from Florida, and even after it arrived here. When finally Betsy did begin to eat she began also to suffer from severe indigestion. The cause of the indigestion was learned late yesterday afternoon, when Mr. William A. McCann, of Jacksonville, Fla., visited the menagerie. He knows all about sea cows, and, happening to be in the city and learning that Betsy was in trouble, went out to see if he could help her.

He learned that Betsy had begun to eat grass and to nibble at lettuce. He said the lettuce was all right, but that ordinary grass is indigestible to sea cows. The animal, he said, ought to have a regular supply of Florida "turtle grass." As soon as Director Smith learned this he sent for some. This grass grows in fresh water in lots of the Indian River. Numerous inlets have been cut through into the Indian River from the ocean, and the great influx of salt water is killing the turtle grass and threatening the complete extinction of the sea cow.

Mr. McCann further said that Betsy must be kept in water no cooler than 70 degrees; that the water must be frequently changed and that she must be given a frequent salt water bath. Sea cows are very delicate, and neglect of food and diet easily causes death, a fact which explains why Betsy is to-day the only sea cow in captivity in the world.

The animals are said to be very intelligent and learn soon to come when called by their names. The only noise they make is a thin little squeaking, like that of a mouse. They suckle their young and give milk, just like ordinary domestic cows.

While Mr. McCann was explaining about water and diet, Keeper Patrick Shannon entered with a bunch of seaweed that he had gathered on the rocks in the East River at the foot of Seventy-ninth street. He put some in the tank and Betsy ate it eagerly. It is somewhat a tough, though, spongy with turtle grass, but will solve the problem of food till a supply of grass can be obtained.

CAUGHT A HORSE DISEASE.

Mrs. Erling Developed Glanders, and Two Animals Were Shot.

New Brunswick, N. J., May 8.—Mrs. Julius Erling, of No. 312 Handy street, became suddenly ill yesterday and later showed symptoms of glanders. Dr. Lohlein, a veterinary surgeon, was called, and he said that Mr. Erling's two horses would have to be killed. Dr. Hunt, secretary of the State Board of Health, agreed with Dr. Lohlein, and this afternoon the horses were shot.

Mrs. Erling was affected in a manner similar to the horses. She is the wife of a butcher, and a son-in-law helped her husband in his stable duties.



Painter Mitchell Fell from a Ladder and Killed Baby Scott.

One of the bolts holding the swinging ladder wore off its nut and slipped through the beam. Two painters were thrown off their perch and seriously injured. One fell on Charles Scott, who was playing on the basement steps, and inflicted such injuries that the little one died a few minutes later in his mother's arms.

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